

JS-6

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA - EASTERN DIVISION

ADRIEN JOSEPH SOTOMAYOR,	)	Case No.ED CV24-02057-SVW (AS)
	)	
Petitioner,	)	<b>ORDER OF DISMISSAL</b>
	)	
v.	)	
	)	
THE PEOPLE OF THE STATE	)	
OF CALIFORNIA,	)	
	)	
Respondent.	)	

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**I. BACKGROUND**

On September 23, 2024, Adrien Joseph Sotomayor, ("Petitioner"), a California state prisoner proceeding pro se, filed a Petition for Writ of Habeas Corpus by a Person in State Custody pursuant to 28 U.S.C. § 2254 ("Petition"). (Dkt. No. 1). Petitioner challenges his 2020 conviction, in Riverside County Superior Court (Case No. BAF1800077), for voluntary manslaughter, attempted voluntary manslaughter, and the imposition of a gun enhancement and a prior strike enhancement at sentencing. (See

1 Petition at 2). The Petition alleges the following grounds for  
2 federal habeas relief: (1) ineffective assistance of counsel;  
3 (2) the trial court's evidentiary rulings and prosecutorial  
4 misconduct; and (3) an excessive, disproportionate, and unlawful  
5 sentence (Petition at 3, 37, 69, as paginated on the Court's  
6 electronic docket).

7  
8 On April 24, 2023, Petitioner filed a federal habeas petition  
9 pursuant to 28 U.S.C. § 2254 in United States District Court for  
10 the Central District of California, Sotomayor v. The People of the  
11 State of California, case no. EDCV 23-727-AS ("Sotomayor I")<sup>1</sup>, in  
12 which he challenged the same 2020 conviction. On October 23, 2024,  
13 the Court denied the petition and entered judgment dismissing the  
14 action with prejudice. (See Sotomayor I; Dkt. Nos. 22-23).

## 15 16 II. DISCUSSION

17  
18 A federal habeas petition is successive if it raises claims  
19 that were or could have been adjudicated on the merits in previous  
20 petition. Cooper v. Calderon, 274 F.3d 1270, 1273 (9th Cir.  
21 2001) (per curiam). The Antiterrorism and Effective Death Penalty  
22 Act of 1996 ("AEDPA"), enacted on April 24, 1996, provides in  
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24 <sup>1</sup> The Court takes judicial notice of Sotomayor I and the  
25 filings therein. See Fed. R. Evid. 201; Harris v. County of  
26 Orange, 682 F.3d 1126, 1131-32 (9th Cir. 2012) (court may take  
judicial notice of undisputed matters of public record including  
documents on file in federal or state courts).

1 pertinent part that:

2  
3 (a) No circuit or district judge shall be  
4 required to entertain an application for a writ of  
5 habeas corpus to inquire into the detention of a  
6 person pursuant to a judgment of a court of the  
7 United States if it appears that the legality of such  
8 detention has been determined by a judge or court of  
9 the United States on a prior application for a writ  
10 of habeas corpus, except as provided in §2255.

11 (b)(1) A claim presented in a second or  
12 successive habeas corpus application under section  
13 2254 that was presented in a prior application shall  
14 be dismissed.

15 (2) A claim presented in a second or successive  
16 habeas corpus application under section 2254 that was  
17 not presented in a prior application shall be  
18 dismissed unless--

19 (A) the applicant shows that the claim relies on  
20 a new rule of constitutional law, made retroactive to  
21 cases on collateral review by the Supreme Court, that  
22 was previously unavailable; or

23 (B)(i) the factual predicate for the claim could  
24 not have been discovered previously through the  
25 exercise of due diligence; and

26 (ii) the facts underlying the claim, if proven  
27 and viewed in light of the evidence as a whole, would  
28 be sufficient to establish by clear and convincing  
evidence that, but for constitutional error, no  
reasonable fact finder would have found the applicant  
guilty of the underlying offense.

(3)(A) Before a second or successive application  
permitted by this section is filed in the district  
court, the applicant shall move in the appropriate  
court of appeals for an order authorizing the  
district court to consider the application.

(B) A motion in the court of appeals for an  
order authorizing the district court to consider a  
second or successive application shall be determined  
by a three-judge panel of the court of appeals.

(C) The court of appeals may authorize the  
filing of a second or successive application only if  
it determines that the application makes a prima  
facie showing that the application satisfies the  
requirements of this subsection.

(D) The court of appeals shall grant or deny the  
authorization to file a second or successive  
application not later than 30 days after the filing  
of the motion.

(E) The grant or denial of an authorization by  
a court of appeals to file a second or successive

1 application shall not be appealable and shall not be  
2 the subject of a Petition for Rehearing or for a Writ  
of Certiorari.

3 (4) A district court shall dismiss any claim  
4 presented in a second or successive application that  
5 the court of appeals has authorized to be filed  
unless the applicant shows that the claim satisfies  
the requirements of this section. 28 U.S.C. § 2244.

6 28 U.S.C. § 2244(b)(3) "creates a 'gatekeeping' mechanism for  
7 the consideration of second or successive applications in district  
8 court. The prospective applicant must file in the court of  
9 appeals a motion for leave to file a second or successive habeas  
10 application in the district court. § 2244(b)(3)(A)." Felker v.  
11 Turpin, 518 U.S. 651, 657(1996).

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13 The instant Petition and the prior habeas action (Sotomayor  
14 I), challenge Petitioner's custody pursuant to the same 2020  
15 judgment entered by the Riverside County Superior Court.  
16 Accordingly, the instant Petition, filed on September 23, 2024,  
17 well after the effective date of the AEDPA, is a second or  
18 successive habeas petition for purposes of 28 U.S.C. § 2244.  
19 Therefore, Petitioner was required to obtain authorization from  
20 the Court of Appeals before filing the present Petition. See 28  
21 U.S.C. §2244(b)(3)(A).

22  
23 Moreover, the claims asserted in the instant Petition do not  
24 appear to fall within the exceptions to the bar on second or  
25 successive petitions because the asserted claims are not based on  
26 newly discovered facts or a "a new rule of constitutional law,  
27 made retroactive to cases on collateral review by the Supreme  
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1 Court, that was previously unavailable." Tyler v. Cain, 533 U.S.  
2 656, 662 (2001). However, this determination must be made by the  
3 United States Court of Appeals upon a petitioner's motion for an  
4 order authorizing the district court to consider his second or  
5 successive petition. 28 U.S.C. § 2244(b); see Burton v. Stewart,  
6 549 U.S. 147, 157 (2007) (where the petitioner did not receive  
7 authorization from the Court of Appeals before filing second or  
8 successive petition, "the District Court was without jurisdiction  
9 to entertain [the petition]"); Barapind v. Reno, 225 F.3d 1100,  
10 1111 (9th Cir. 2000) ("[T]he prior-appellate-review mechanism set  
11 forth in § 2244(b) requires the permission of the court of appeals  
12 before 'a second or successive habeas application under § 2254'  
13 may be commenced.").

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15 Because there is no indication that Petitioner has obtained  
16 authorization from the Ninth Circuit Court of Appeals, this Court  
17 cannot entertain the present Petition. See Burton v. Stewart, 549  
18 U.S. at 157; Cooper, 274 F.3d at 1274 ("When the AEDPA is in  
19 play, the district court may not, in the absence of proper  
20 authorization from the court appeals, consider a second or  
21 successive habeas application.'")

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### III. ORDER

ACCORDINGLY, IT IS ORDERED that the Petition be dismissed without prejudice.

LET JUDGMENT BE ENTERED ACCORDINGLY.

DATED: December 6, 2024

  
STEPHEN V. WILSON

STEPHEN V. WILSON  
UNITED STATES DISTRICT JUDGE

Presented by:

/ s / Sagar

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ALKA SAGAR

UNITED STATES MAGISTRATE JUDGE